distinction between the pricing of combined UNEs and uncombined UNEs, except to provide that the prices of combined UNEs shall not include duplicate or unnecessary charges. AT&T also asserts that the agreement makes no distinction between the pricing of UNE combinations that would permit AT&T to recreate an existing BellSouth retail service and those that would not.

Alternative Argument

In the alternative, AT&T argues that even though its interconnection agreement with BellSouth provides prices for UNE combinations, in the event that we were to find otherwise, appropriate prices for UNE combinations must be cost-based and forward looking pursuant to Section 252(d)(1) of the Act, not discounted from service resale prices. AT&T notes that the Eighth Circuit found that competing carriers may obtain the ability to provide finished telecommunications services entirely through the use of UNEs purchased at cost-based prices, and suggests that that finding "forecloses any possible argument that combinations of network elements used to provide services to customers can be priced as though they were resale," the very argument that BellSouth makes. AT&T asserts that using combined network elements is not the functional equivalent of providing telecommunications service through resale. AT&T further asserts that if it can purchase loop and switch port combinations only through service resale, it is effectively precluded from joint marketing local services with its long-distance services pursuant to Section 271(e) of the Act. AT&T notes that BellSouth witness Varner acknowledges that to be the necessary outcome of BellSouth's recreated service resale theory.

AT&T witness Gillan argues that what BellSouth proposes is a third pricing standard, one that is in addition to the standards set forth in Sections 252(d)(1) and (3) of the Act, and one not contemplated in the Act. BellSouth witness Hendrix testifies that "in Florida, when a[n] [ALEC] orders a combination of network elements or orders individual network elements that, when combined, duplicate a retail service provided by BellSouth, for purposes of billing and provisioning, such orders should be treated as resale." Witness Gillan rejects that, arguing that that statement "renders meaningless the entire premise of non-discriminatory access." He maintains that the Act as interpreted by the Eighth Circuit provides no support for the theory that pricing and provisioning of a network element depends upon the entrant's use of the services it offers.

AT&T witness Falcone argues that BellSouth should not be permitted to physically disconnect already assembled network elements, as it proposes to do if the Eighth Circuit is upheld, thereby requiring AT&T to reassemble them by means of costly physically collocated facilities. Such a practice, he argues, serves no valid commercial purpose, is needlessly disruptive to service, is unnecessary, and creates an insurmountable entry barrier. He asserts that BellSouth can separate a migrating customer's loop and switch port electronically and then AT&T, using the features, functions and capabilities of the unbundled switch it purchased, would also electronically recombine them. He describes this process as one that is similar to the "recent change" process BellSouth uses when deactivating service to a customer. He testifies that AT&T has learned that at least two vendors are capable of supplying technology that would effectively adapt the "recent change" process for the purposes of interconnecting ALECs. He argues that BellSouth's "recent change" process is a reasonable and available alternative to physical collocation, and states that:

> If BellSouth has an inexpensive, efficient, and nondisruptive mechanism for changing its customers' local and long distance service, the nondiscrimination provisions of the Act mandate that competing carriers not be burdened by a more expensive, less efficient, disruptive, and anticompetitive procedure for proving service using combined UNEs.

According to AT&T witness Gillan, what divides BellSouth and AT&T on the matter of recreated retail services is not price. He offers an illustration of revenues from a typical Florida residential customer whose service might be provided by service resale or network elements, which shows the cost of providing service by network elements to be almost $10.00 more than by service resale. He argues that:

> If BellSouth was actually willing to sell us these network elements for the service resale price, we'd take it. But what they're not willing to do is recognize that a network element purchaser steps into the market as a complete local telephone company, fully competing against BellSouth like any other local telephone company, with the ability to offer any set of services on these network elements, including exchange access services,

> and bring the full brunt of competition to this entire range of activities.

What witness Gillan intimates is that the real stake for BellSouth is retaining an entitlement to access charge revenues.

BellSouth

Basic Argument

BellSouth witness Hendrix, the company's lead negotiator, states that BellSouth intends to abide by its contractual obligation to provide AT&T with UNEs in combinations. He notes that BellSouth took on this obligation only because it believed that the law applicable at the time required it to do so. He noted further that BellSouth believes the Eighth Circuit's ruling on rehearing, Iowa Utilities Board II, supra, will remove this obligation from BellSouth if affirmed by the Supreme Court and require the parties to renegotiate the affected provisions of their agreement.

According to witness Hendrix, BellSouth's interconnection agreement with AT&T specifies prices only for individual network elements and does not specify prices for combinations of network elements, including combinations that recreate an existing BellSouth retail service. BellSouth argues that, as evidenced by Order Nos. PSC-96-1579-FOF-TP, PSC-97-0298-FOF-TP, and PSC-97-0600-FOF-TP, we did not arbitrate the price AT&T would pay for network element combinations. BellSouth argues further that AT&T witness Eppsteiner acknowledges this to be true.

BellSouth contends that there is no evidence to suggest that it voluntarily relinquished its long held position that UNE combinations recreating BellSouth retail services should be priced as service resale. BellSouth witness Varner testifies that BellSouth has contested the ALECs' position on the pricing standard for recreative combinations in arbitration proceedings in every state in its region, in every Section 271 proceeding, before the FCC and before the Eighth Circuit. BellSouth argues that AT&T witness Eppsteiner's testimony that BellSouth refused to provide AT&T with combinations that recreated existing BellSouth retail services at cost-based prices is additional evidence of BellSouth's steadfastness.

Witness Hendrix testifies that Table 1 of Part IV of the agreement does not contain specific prices for UNE combinations; rather, the prices it contains are for individual UNEs. He rejects

witness Eppsteiner's assertion that the prices for UNE combinations are the sums of the prices in Table 1 for the component elements. BellSouth contends that AT&T witness Eppsteiner in fact agrees that Table 1 is a list of the prices for individual unbundled network elements.

Witness Hendrix testifies that Section 36.1 of Part IV only obligates the parties to work together to establish total recurring and non-recurring charges for orders for multiple network elements; it does not specify prices for combinations. He acknowledges, however, that Section 36.1 is pertinent only when multiple elements are ordered as combinations, and is not pertinent in a service resale context. He testifies further that Section 4.5 of Attachment 4 merely prohibits BellSouth from separating already combined elements; it does not address pricing. BellSouth contends that witness Eppsteiner agrees that no language in the agreement states the price for UNE combinations as the sum of element prices.

Witness Hendrix also acknowledges that the state commission in Kentucky ruled that AT&T can combine UNEs even to recreate a BellSouth retail service and that AT&T would pay the sum of the element prices for combinations. While he also acknowledges that the language related to pricing in BellSouth's Florida agreement with AT&T was in most respects the same as the language in its Kentucky agreement, Section 36.1, which is not in the Kentucky agreement, and whose full significance is often missed, is a key difference and sustains BellSouth's contention that its Florida agreement with AT&T does not specify the pricing standard for UNE combinations.

Witness Hendrix testifies that Section 36.1 of the agreement consists of two separate pricing requirements. The first requirement is expressed in the first sentence:

> Any BellSouth non-recurring and recurring charges shall not include duplicate charges or charges for functions or activities that AT&T does not need when two or more Network Elements are combined in a single order.

That requirement simply recognizes that some economies are likely to prevail when AT&T orders network elements in combination on the same order as compared with a series of orders for either individual or combined elements.

The second requirement is expressed in the second sentence:

> BellSouth and AT&T shall work together to mutually agree upon the total non-recurring and recurring charge(s) to be paid by AT&T when ordering multiple network elements.

Witness Hendrix acknowledges that under the requirement of the first sentence of Section 36.1, the parties are to negotiate the removal of duplicate and unnecessary charges when AT&T orders two or more elements in a single order. He goes on, however, to assert that Section 36.1 requires the parties to also negotiate non-recurring charges and recurring charges when AT&T orders multiple elements, as required by Order Nos. PSC-97-0298-FOF-TP and PSC-97-0600-FOF-TP. Asked if Section 36.1 means that AT&T pays the sum of the network elements comprising a combination less any duplicate or unnecessary charges, witness Hendrix says it does not, stating that the price AT&T should pay is a market-based price that reflects the risks attendant to the organizational requirements BellSouth must undertake to provision network element combinations, as well as the elimination of duplicate and unnecessary charges.

He testifies that stranded plant (idle loops in the hands of ALECs) with exhaust imminent also represents a risk because it would jeopardize BellSouth's ability to meet customer demand, whether from ALECs or end users. He testifies that another risk BellSouth would incur is a negative effect on revenues resulting from BellSouth's inability to use facilities in the hands of ALECs to market its own products. He suggests that the second requirement is the one by which the risk that BellSouth incurs in organizing to provide UNE combinations to AT&T can be reflected in the price. He testifies that the price of any network element combination, save those that recreate an existing BellSouth retail service, should be negotiated by AT&T and BellSouth, and that those prices should be market based in order to reflect the risks BellSouth is required to assume. He maintains that this contention is bolstered by the language it attempted to include in Section 36.1.

BellSouth witness Varner insists, contrary to AT&T witness Gillan's intimation that the real concern in this case is entitlement to access charge revenues, that this case is indeed about price and that it is not about provisioning terms and conditions under which ALECs would provide competitive local telecommunications services. He testifies, however, that the provision of basic residential telephone service only begins to become economically attractive with consideration of access charges. He provides an illustration showing that the typical cost of providing Rate Group 12 residential service without features is

$24.90 compared with the retail price of $10.65. With access charges of $14.11 in total, however, the retail price increases to $24.76. We note again that where an ALEC provisions local services by means of service resale, BellSouth retains the entitlement to access charge revenues.

BellSouth witness Landry BellSouth, responding to AT&T witness Falcone's testimony concerning the "recent change" process, also known as Dedicated Inside Plant and Dedicated Outside Plant (DIP/DOP), states the DIP/DOP is applicable to retail and resale services, but not to unbundled network elements. He asserts that provisioning a functional loop and switch port to a ALEC requires that they be physically separated and interconnected to the ALEC. He testifies that once an ALEC is interconnected, it can activate the service electronically through the switch.

BellSouth's basic argument is that its agreement with AT&T does not provide a pricing standard for combinations of network elements other than a requirement that the parties negotiate market-based prices for combinations that do not recreate an existing BellSouth retail service and that the price for network element combinations that do recreate an existing BellSouth retail service should be the retail price for the service less the appropriate wholesale discount. BellSouth makes the same case here for AT&T generally with respect to network element combinations that recreate existing BellSouth retail services as it does above for MCIm.

Conclusion

Provisioning

Under the Eighth Circuit's construction of the Act, nothing prevents ILECs from providing network elements in combinations, if they so choose. Indeed, as AT&T witness Eppsteiner testifies, the AT&T interconnection agreement with BellSouth provides in Section 30.5 of Part II, that BellSouth shall offer UNEs in combination with any other UNE or UNEs in order to permit AT&T to provide telecommunications services. At Section 30.4 of Part II, the agreement authorizes AT&T to use UNEs to provide any feature, function, or service option within the capacity of the UNE. Thus, we find that BellSouth clearly is obligated under its agreement with AT&T to provide network elements as defined in 47 C.F.R. §51.31, individually or in combinations, if so ordered, whether already combined at the time of order or not, and that AT&T may provision network element combinations in any manner of its

choosing, including the recreation of existing BellSouth retail services.

BellSouth witness Hendrix testifies that BellSouth does not dispute that it has an obligation under the agreement to provide UNE combinations to AT&T, even combinations not yet in existence. BellSouth witness Varner is in accord. What is generally in contention is the price at which BellSouth must provide AT&T with network element combinations, and particularly the applicable pricing standard when AT&T combines UNEs in a manner that recreates an existing BellSouth retail service.

Pricing

Section 34 of Part IV of the agreement provides that network elements and combinations shall be:

> priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and the Florida Public Service Commission.

Section 36 of Part IV, states that:

> [t]he prices that AT&T shall pay to BellSouth for Unbundled Network Elements are set forth in Table 1.

Table 1 sets forth the recurring and non-recurring rates we approved in Order No. PSC-96-1579-FOF-TP at Attachment A. Section 36.1 of Part IV, provides, as both witness Eppsteiner and witness Hendrix testify, that AT&T and BellSouth shall work together to eliminate "duplicate charges or charges for functions or activities that AT&T does not need" when AT&T orders network elements in combinations.

The rates that we approved in Order No. PSC-96-1579-FOF-TP are applicable to UNEs when ordered individually. Neither party disputes this. In Order No. PSC-97-0298-FOF-TP, however, we stated at pages 30 and 31 that we were not presented with the specific issue of the pricing of recombined elements when recreating the same service offered for resale, and for that reason it was inappropriate for us to then decide that issue. Even more broadly, we stated in effect that we had not been presented with the issue of combinations pricing in general. Thus, we find that the prices set forth in Part IV of AT&T's agreement with BellSouth are limited in applicability to unbundled network elements when ordered individually, with one exception, which we discuss immediately

below. We find no language in the agreement that would in some way extend their applicability to unbundled network elements when otherwise ordered in combination. Of pivotal importance, no limiting language such as the language in Section 2.6 of Attachment III in MCIm's agreement with BellSouth appears in AT&T's agreement.

Having found that the prices in Part IV apply generally only to individually ordered UNEs, we find as an exception that the agreement provides a pricing standard for combinations of network elements already in existence that do not recreate an existing BellSouth retail service. We are persuaded by witness Falcone's testimony that an existing customer, for which an assembled loop and switch port is in place, can be migrated from BellSouth to AT&T electronically. Indeed, Section 4.5 of Attachment 4 of the AT&T-BellSouth agreement provides that BellSouth shall not disconnect assembled network elements, but shall provide them to AT&T "interconnected and functional without any disconnection or disruption of functionality." Therefore, for network element combinations that do not recreate an existing BellSouth retail service and that exist at the time of AT&T's order, we find, as an exception, that the price AT&T shall pay is the sum of the prices for the component elements shown in Table 1 of Part IV. For the specific case of a migration of an existing BellSouth customer to AT&T, the price AT&T shall pay is the sum of the prices for the loop and switch port. This exception is sustainable since the elements are already assembled and cannot be disassembled. BellSouth will not incur a cost for assembling or reassembling them, or any other combining-related cost.

The provisions on which AT&T relies for its contention that BellSouth is obligated to provide element combinations without limitation as to the use to which AT&T may put them, have that effect clearly enough. The provisions of its agreement on which AT&T relies for its contention that the pricing standard for UNE combinations in any case is the sum of the prices for the component elements in Table 1 of Attachment I, however, do not have a similarly clear effect. Section 1, General Terms and Conditions, provides that the agreement sets forth the prices for network elements individually and for network element combinations. Sections 36 and 36.1 of Part IV accordingly establish those prices, Section 36 for UNEs ordered individually and Section 36.1 for UNEs ordered in combinations (or multiple network elements). Separate pricing provisions for UNEs ordered individually and for UNEs ordered in combination are reasonable since AT&T could be expected to adopt both facilities-based and unbundled access entry strategies.

We disagree with AT&T that the prices AT&T should pay BellSouth for UNE combinations recreating an existing BellSouth retail service should not be determined differently than for UNE combinations that do not recreate an existing BellSouth retail service. We note, however, that the Eighth Circuit has addressed the pricing standard applicable to UNE combinations without exception as to the service provided, as follows:

> Although a competing carrier may obtain the capability of providing local telephone service at cost-based rates under unbundled access as opposed to wholesale rates under resale, unbundled access has several disadvantages that preserve resale as a meaningful alternative. Carriers entering the local telecommunications markets by purchasing unbundled network elements face greater risks than those carriers that resell an incumbent LEC's services.
>
> * * *
>
> The increased risk and the additional cost of recombining the unbundled elements will hinder the ability of competing carriers to undercut [Section 251(c)(4)] prices and lure these customers away from the incumbent LECs. Nor do we believe that subsection 271(e)(1)'s limitation on the joint marketing of local services with long-distance services will be meaningless.

120 F.3d at 815.

While we ruled in Order No. PSC-96-1579-FOF-TP at page 38 that ALECs may combine network elements in any manner of their choosing, including in a manner recreating an existing BellSouth retail service, we have several times expressed our concern with the potential undermining of the Section 251(c)(4)(A) resale pricing standard. In addition, we have noted above our concerns with the Section 271(e)(1) joint marketing restriction and with the entitlement to access charge revenues. At the same time, we conclude, as we have more fully developed below, that this record shows that the purchase of a BellSouth loop and switch port combination does not, without more, constitute a recreation of an existing BellSouth retail service, nor does it constitute, without more, a retail service of any kind.

Thus, upon consideration, we find that the AT&T agreement with BellSouth does provide a pricing standard for those UNE combinations that are not already in existence and those that recreate a BellSouth retail service, whether in existence or not. That standard, which is expressed in Section 36.1 and not modified in any way elsewhere in the agreement, is that the parties must negotiate total recurring and non-recurring charges for UNE combinations that at least reflect the elimination of duplicate and unnecessary charges. Both of these requirements appear in the agreement because of our rulings in Order Nos. PSC-97-0298-FOF-TP and PSC-97-0600-FOF-TP. We note that Section 36.1 provides both in the case of the first and of the second requirement that if the parties are unable to reach agreement through negotiation they may petition for an arbitrated resolution. AT&T may alternatively purchase unbundled network elements individually at the prices set forth in the parties' agreement, in which case, BellSouth shall be required to provide AT&T with access to its network for purposes of combining elements in order to provide telecommunications services.

We believe that Section 36.1, read in conjunction with other provisions in the agreement related to pricing and BellSouth's obligation to provide AT&T with UNE combinations, is plain and unambiguous. While this same language appears in MCIm's interconnection agreement with BellSouth, its effect in that case is substantially modified by other language. No such modifying language appears in the AT&T agreement. As we noted, this difference is of pivotal importance. Thus, the language in Section 36.1, plain and unambiguous as it is, must be construed as the expression of the parties' intent at the time of forming the agreement. Because this language is plain and unambiguous, it is again our task only to determine what intent the language expresses, not to divine another intent that might have been in the minds, in this case, of AT&T's negotiators. See James v. Gulf Insur. Co., 66 So.2d 62 (Fla. 1953); Acceleration Nat'l Service Corp. v. Brickell Financial Services Motor Club, Inc., 541 So.2d 738 (Fla. 3d DCA 1989), rev. den., 548 So.2d 662 (Fla.1989).

We reach this conclusion as well mindful that the matter of the pricing standard to be applied when unbundled network elements are combined or recombined to recreate an existing BellSouth retail service has been vigorously disputed by these parties from the very beginning. For that reason, we are not able to interpret the language in the AT&T-BellSouth agreement to represent a meeting of the minds of the parties with respect to pricing network element

combinations that recreate retail services in favor of AT&T's position.[3]

2. Switched Access Usage Data

The issue presented is whether BellSouth is obligated under the terms of its interconnection agreement with AT&T to furnish switched access usage data to AT&T. As set forth in this part, we conclude that BellSouth is obligated under the terms of the agreement to furnish switched access usage data to AT&T when AT&T provides service using unbundled local switching.

AT&T

AT&T witness Eppsteiner testifies that Attachment 7 of AT&T's agreement with BellSouth sets forth BellSouth's obligation to provide usage data for switched access service. He testifies that Section 2.1 provides that:

> BellSouth shall provide AT&T with Recorded Usage Data in accordance with this Attachment 7.

He testifies further that Section 3.1 provides that:

> BellSouth will record all usage originating from AT&T customers using BellSouth-provided Elements or Local services. Recorded Usage Data includes, but is not limited to, the following categories of information:
>
> Completed Calls
> Use of Feature Activations for Call Return, Repeat Dialing, and Usage Sensitive Three Way
> Rated Calls to Information Providers Reached Via BellSouth Facilities

[3]Here, we also note BellSouth witness Varner's testimony that BellSouth will negotiate with AT&T the portion of their agreement relating to the provisioning of UNE combinations if the Supreme Court affirms the Eighth Circuit. Section 9.3, General Terms and Conditions, of the AT&T-BellSouth agreement requires the parties to renegotiate in good faith mutually acceptable new terms if a final and nonappealable judicial act "materially affects any material terms" of the agreement.

> Calls to Directory Assistance Where BellSouth Provides Such Service to an AT&T Subscriber
> Calls Completed Via BellSouth-Provided Operator Services Where BellSouth Provides Such Service to AT&T's Local Service Customer originating from AT&T's customer or billed to AT&T
> For BellSouth-Provided Centrex Service, Station Level Detail Records Shall Include Completed Call Detail and Complete Timing Information

Witness Eppsteiner testifies that the language of the agreement was crafted broadly enough to include interstate and intrastate access service, local exchange service and long-distance service.

Witness Eppsteiner testifies further that BellSouth has not provided correct usage data for test calls made by AT&T customers. He testifies that BellSouth has neither provided usage data for interstate access services, nor for switching minutes of use.

AT&T relies also on the testimony of witness Gillan, which we discuss above in detail in Part II.B.2.

BellSouth

BellSouth witness Hendrix argues that AT&T witness Eppsteiner does not identify any language in the AT&T-BellSouth interconnection agreement that would obligate BellSouth to provide intrastate interLATA usage data when AT&T is purchasing unbundled local switching from BellSouth. BellSouth argues further, as we also discuss in more detail in Part II.B.2 above, that, because we have not ruled that an ALEC purchasing unbundled local switching is entitled to bill for intrastate interLATA access, BellSouth will continue to bill the applicable charges on intrastate interLATA calls. It argues also that there is no need for it to furnish intrastate interLATA usage data to AT&T.

Conclusion

BellSouth's position that it is not obligated to provide AT&T with usage data for intrastate interLATA calls rests on its contention that the service AT&T provides when provisioned with a BellSouth loop and port combination recreates an existing BellSouth

retail service. We have concluded, however, that in providing service by means of purchasing unbundled loops and switch ports from BellSouth, AT&T does not recreate an existing BellSouth service. The record shows that, with the acquisition of local switching through the purchase of an unbundled switch port, AT&T gains the right to provide all features, functions, and capabilities technically feasible within the switch, including exchange access service. See 47 C.F.R. §51.319(c); 47 U.S.C. §3(a)(2)(45). In addition, we note that BellSouth must provide AT&T, as a requesting carrier, with access to any unbundled network element in a manner that allows AT&T to provide any telecommunications service that can be offered by means of that network element, 47 C.F.R. §51.307(c), and that BellSouth may not impose limitations, restrictions, or requirements on requests for, or for the use of, unbundled network elements that would impair the ability of AT&T to offer a telecommunications service in the manner that AT&T intends, 47 C.F.R. §51.309(a); 47 U.S.C. §251(c)(3). Accordingly, we find upon consideration that BellSouth is required under the terms of its interconnection agreement with AT&T to record and provide AT&T with switched access usage data necessary for AT&T to bill IXCs when AT&T provides service using unbundled local switching purchased from BellSouth either on a stand-alone basis or in combination with other unbundled network elements.

Section 2.1 of Attachment 7 quite plainly provides that:

> BellSouth shall provide AT&T with Recorded Usage Data in accordance with this Attachment 7.

Section 3.1 of Attachment 7 provides that BellSouth shall supply AT&T with recorded usage data for "completed calls." No language in the agreement sets apart intrastate interLATA calls from "completed calls."

With respect to BellSouth's obligation to provide usage data for switched access service, we believe that the pertinent language of the agreement in this case as well is plain and unambiguous. Again, because it is so, it is our task merely to determine what intent the language expresses.

D. Common Matters

1. Standard for Recreated Retail Service

The issue presented is what standard should be used to identify what combinations of unbundled network elements recreate

an existing BellSouth retail service. As set forth in this part, we conclude that a loop and a port combination by itself does not constitute the recreation of a BellSouth retail service and we direct the parties to determine through negotiation what services provisioned through unbundled access, if any, do constitute the recreation of a BellSouth retail service.

The parties differ in their view of which network elements, when combined, recreate a BellSouth retail service. We believe that BellSouth's concern is over the recreation of its basic local service. BellSouth's position is that a loop and port combination recreates basic local service. In the following, we address BellSouth's concern in the context of Section 364.02(2), Florida Statutes, which defines basic flat-rate residential and single-line, flat-rate, business services.

Basic Local Service Defined

Section 364.02(2), Florida Statutes, defines Basic Local Telecommunications Service as:

> voice-grade, flat-rate residential and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing ....

This definition lists what constitutes basic service for the end user, but it does not include an exhaustive list of the network elements or functions necessary to provide basic local service.

BellSouth witness Hendrix states that with basic local service, an end user obtains the capability to complete local calls, and access to operator services, 911, and other carriers. BellSouth witness Varner confirms that capability and adds White Pages listing. AT&T witness Walsh agrees, stating that with basic local service, an end user would receive the same capability whether an AT&T customer or a BellSouth customer.

Customer Migration and "Switch As Is" for Combinations of UNEs

BellSouth's position is that when loop and port elements are combined, basic local service is recreated and should be priced at the discounted wholesale rate. BellSouth witness Varner states that use of the word "migration" in this proceeding could lead to confusion, since the term typically applies to a "switch as is" situation. BellSouth witness Varner states that the term "switch as is" applies only to the retail service environment and this, he states, is not a resale proceeding. AT&T witness Walsh states that "migration occurs when a customer with existing service requests a change in its local service provider, i.e., moving an existing BellSouth customer to AT&T." Witness Walsh contrasts this definition with service installation, which he defines as "the establishment of any new (or additional) service for a[n] [A]LEC customer." MCIm witness Hyde provides a similar definition, stating that migration occurs when an existing customer moves from one local exchange provider to another. Witness Hyde presents an example where migration occurs when a customer moves from BellSouth to MCIm and as well when later that same customer migrates from MCIm to AT&T, and then from AT&T back to BellSouth. Witness Hyde states that all of these cases represent migration.

The term "migration" is used for a specific reason. AT&T and MCIm request that in this proceeding we address the non-recurring charge for migrating specific loops and ports that serve an existing BellSouth customer. This is because the AT&T-BellSouth and MCIm-BellSouth agreements state that network elements currently in use may not be broken apart when ordered in combination. Specifically, the MCIm-BellSouth agreement states in Section 2.2.15.3 of Attachment VIII:

> When MCIm orders Network Elements or Combinations that are currently interconnected and functional, Network Elements and Combinations shall remain connected and functional without any disconnection or disruption of functionality.

The AT&T-BellSouth agreement states in Section 4.5 of Attachment 4:

> When AT&T orders Elements or Combinations that are currently interconnected and functional, such Elements and Combinations will remain interconnected and functional without any disconnection or disruption of service.

We conclude that, under this language, BellSouth is obligated to provide AT&T and MCIm any combination of network elements that are currently serving a BellSouth customer on an "as is" basis.

We note that the MCIm-BellSouth and AT&T-BellSouth agreements both define the term "combination." The MCIm-BellSouth agreement states in Part B at page 3 that:

> "Combinations" means provision by ILEC of two or more connected Network Elements ordered by MCIM to provide its telecommunications services in a geographic area or to a specific customer and that are placed on the same order by MCIM.

The AT&T-BellSouth agreement in Attachment 11 at page 3 states:

> "Combinations" consist of multiple Network Elements that are logically related to enable AT&T to provide service in a geographic area or to a specific customer and that are placed on the same order by AT&T.

The apparent purpose of this language in the agreements is to avoid the disconnection of network elements already in place. Under BellSouth's collocation-based proposal in this proceeding, when a loop and port are ordered, each element would be physically disconnected from BellSouth's network and reconnected at the ALEC's collocation facility. BellSouth witness Landry states that when an ALEC orders a loop and port combination, BellSouth will separate the request into two separate service orders and process the request as if each element had been received as an individual order.

We find that BellSouth's requirement that an ALEC must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit. As we have already noted, the court stated held that a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network and has no obligation to own or control some portion of a telecommunications network before being able to purchase unbundled elements. Iowa Utilities Bd. I, 120 F.3d at 814. BellSouth's collocation proposal would impose on an ALEC seeking unbundled access the very obligation the court held to be inappropriate under the Act, i.e., to own or control some portion of the network.

Nowhere in the Act or the FCC's rules and interconnection orders or the Eighth Circuit's opinions is there support for BellSouth's position that each network element ordered in sequence (in combination or for combining) by an ALEC must be physically disconnected from an ILEC's network, be connected to an ALEC's collocation facility, and then be re-connected to the ILEC's network. We believe that under the Eighth Circuit's opinion, collocation is only a choice for the ALEC, not a mandate, a choice typically to be selected when an ALEC wishes to interconnect its own facilities with those of the ILEC. Section 251 (c)(3) of the Act states that an incumbent local exchange carrier has:

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, non-discriminatory access to unbundled network elements on an unbundled basis at any technically feasible point ... An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Based on the evidence in the record, we conclude that migration of an existing BellSouth end user means that the same network elements serving that end user must be provided "as is" without physical disconnection. However, this does not prohibit AT&T or MCIm from substituting one or more of its own UNEs in conjunction with the UNEs that currently serve the end user. We believe that if the AT&T and MCIm interconnection agreements did not prohibit BellSouth from disconnecting already combined network elements, migration of network elements would not occur because of the court's ruling that ILECs are not required to provide bundled access. Therefore, when AT&T or MCIm places an order for network elements, and those elements are currently combined, BellSouth is obligated to migrate those elements on an "as is" basis.

Network Elements Necessary to Recreate a BellSouth Retail Service

BellSouth witness Hendrix states that there are several factors that we should consider in determining whether or not a combination of UNEs requested by an ALEC recreates an existing retail telecommunications service. Witness Hendrix states that we should "look at the core functions of the requested combination to see if those functions mirror the functions of an existing retail

service offering." AT&T witness Gillan states that regardless of what combination of network elements is used, "it simply is not possible for an entrant to recreate a BellSouth service." Witness Gillan asserts that it takes more than the physical interplay of network elements to define a service. Witness Gillan states that how a service is priced, how the service is supported, and what need the service satisfies defines a service.

BellSouth witness Varner states that basic exchange service is recreated with the purchase of the loop and port in combination. He asserts that other functions such as operator services, directory assistance (DA) and signaling systems are not part of basic local service, because an additional charge is incurred when they are used. Witness Varner states that the loop and port provide access to the same capabilities as are accessible through resale of basic local service.

Witness Varner describes access to operator services, for example, as a function of the switch, that is to say, the switch provides access to the operator services platform. However, we believe that access to operator services and DA through resale is different from access through a loop and switch port. Witness Varner states that if an ALEC ordered a loop and switch port, it would still need an operator services trunk to transmit an operator services call to the operator. The same is true for DA and for 911 service. These trunks are additional network elements for which an ALEC is subject to additional charges. Therefore, we conclude that a loop, port (local switching element), and trunk are necessary to access the operator services platform. Under resale, basic local service includes the operator services trunk for access to an operator, because an end user can literally talk to an operator, without charge, by simply dialing "0". In addition, under resale DA can also be utilized by the end user. In fact, BellSouth offers three free DA calls. Therefore, no additional charges are incurred by an ALEC for the use of operator services trunks and DA trunks under resale. The only additional charges incurred for use of an operator or for DA under resale are the charges when an end user actually uses operator services. In this case, the ALEC pays the retail rate, less the wholesale discount.

Witness Varner, in essence, treats operator services and DA as though they were vertical services, i.e., additional services separate from local service or nonbasic services. On the contrary, access, including the trunk, to operator services and to DA is part of basic local service. When a new end user calls for service, BellSouth does not ask if the end user wants to be connected with the operator. Operator service is a UNE; therefore, access to

operator services cannot be provided if no operator exists. An end user does not incur a charge to access operator services. A charge is only assessed based on the type of service actually provided by the operator. Moreover, we have already stated that when an ALEC orders basic local service for resale, the ALEC receives that service exactly as BellSouth provides it for its own end users. We stated that if an ALEC wants to change a service offering provided by BellSouth, then the ALEC must purchase UNEs to provide such service. This decision was the result of a dispute between AT&T and BellSouth in their arbitration proceeding. AT&T's position was that it wanted to provide its own operator services in conjunction with reselling BellSouth's local service. AT&T argued that such costs would be avoided by BellSouth and should be removed in determining the wholesale discount. We stated that:

> We find that costs associated with operator and directory assistance services will not be 100% avoided, because AT&T will be providing its own customers these services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail services offered to customers shall be made available for resale. If AT&T wants to purchase pieces of services, it must instead, buy unbundled elements and package these elements in a way that meets its needs.

Order No. PSC-96-1579-FOF-TP, page 49. We have been clear that access to operator services and DA services is inherent in basic local service and we find that this is properly reflected in the wholesale discount rate for service resale that we established there.

Our discussion on access to services is important in determining which network elements are necessary to provide basic local service. When an ALEC purchases a loop and port combination, those are the only elements it receives. Not only are operator services, DA, 911 and signaling system databases separate network elements, but the trunks to access each of them are also separate elements.

A loop and switch port serving an end user will not provide a capability to reach all other end users in the local calling area. BellSouth witness Varner states that a loop and switch port combination provides an end user with an ability to call every

other end user that is served by the wire center in which the combination is housed. A wire center is the local switch that serves a particular calling area. Therefore, a loop and switch port combination would only afford an end user with the capability to call other end users that are also served by the same switch. We recognize, moreover, that the area served by a switch is not usually the entire local calling area.

BellSouth witness Varner acknowledges that BellSouth's basic local service includes calling capability to customers that are served by another local switch. He states that about 35 per cent of the local calls on average are handled by the same switch that serves a particular end user and that the other 65 per cent of the calls are transported to another switch. Therefore, when more than one switch serves a local calling area, each switch must be connected in some manner in order to transfer the call from one switch to the other. The network element which carries the call between switches is transport. There are two types of transport: common transport and dedicated transport. Common transport is transport that is utilized by multiple carriers and dedicated transport is utilized by only one carrier. Transport is a separate network element, and use of transport in combination with a loop and port requires an additional charge. No additional charge for transport, however, is assessed under resale.

According to AT&T witness Falcone, not all switches are directly connected to each other with a transport element. Nevertheless, they have a common connection to another switch, usually a tandem switch. He explains that when a local call originating on one switch must be directed to another switch to which it is not directly connected, the originating switch will route the call to either another central office switch or to the tandem switch, which, in turn, will route the call to the terminating switch. Witness Falcone states that typically each switch in the network will be directly connected to another switch. Switches which are not directly connected, but require a local call to be transported by way of the tandem, are not the norm. However, witness Falcone states that these circumstances can be found in BellSouth's network.

Witness Falcone states that, in addition to Operations Support Systems (OSSs), all of the following elements are necessary to provide basic local service: the loop, local switching, operator services (including DA), the signaling system network, transport, tandem switching, and the trunks connecting operator services, DA, and the signaling system to the switch.

The functions of OSSs are pre-ordering, ordering, provisioning, maintenance and repair, and billing. OSSs are essential to providing basic local service. Without OSSs, an ALEC cannot provide billing statements to its customers. We find, therefore, that OSS functions are also a necessary network element in the provision of local service.

Conclusion

We conclude that the record shows that in order to actually provision local service, AT&T or MCIm would have to own or control some or all of the network elements we have just described for each end user beyond the loop and the local switching element. Also, AT&T or MCIm would need to interconnect these elements with BellSouth's network, if either provides any one or more of these elements itself. If AT&T or MCIm orders only a loop and port combination from BellSouth, then to recreate basic local service, we find that they may have to pay either transport or additional switching charges, or both, when a call terminates to a BellSouth customer. This will occur when more than one switch is used to process a call. For example, when a customer of AT&T or MCIm calls a BellSouth customer, the call would pass from facilities owned or controlled by AT&T or MCIm to BellSouth's network. If, after receiving the call, BellSouth transports it, then transport charges would be assessed to AT&T or MCIm. The call must then pass through the switch serving BellSouth's end user. BellSouth would also assess termination switching charges.

If AT&T or MCIm uses its own loop and local switch, then reciprocal compensation charges would apply to traffic that is exchanged between their and BellSouth's networks. Reciprocal compensation is compensation for the exchange of traffic between the networks of two individual carriers. See Order PSC-96-1579-FOF-TP, pages 64-68. Even if AT&T or MCIm own their own loop and switch, they would still need to use BellSouth's network to terminate a local call if one of the end users was not an AT&T or MCIm end user. Therefore, we further conclude that a loop and local switching element combination are insufficient to provision or recreate basic local service.

Another option available for provisioning basic local service, avoiding the use of BellSouth's network, is for AT&T or MCIm to duplicate BellSouth's entire network. According to witness Gillan, this could be achieved by providing all of the elements themselves or by a combination of their own elements and the use of another carrier's network. Again, if AT&T or MCIm do not own or control the facilities that serve both the end user originating the call

and the end user to whom the call is terminated, then AT&T or MCIm must either pay to use BellSouth's network, another carrier's network, or provide all of the network elements themselves.

We believe that BellSouth's network is designed using the network elements necessary to provide various services, not only for the local calling areas of its end users, but also to provide access to its entire service territory as well as outside of it. A new market entrant needs more than a loop and the local switching element to provide local service to an end user. Without access to or control of facilities between other end users, or access to the networks of other carriers, the new entrant would not be able to complete or pass on calls made by a significant number of its end users.

Based on the evidence in the record, and having concluded that a loop and local switching element are insufficient by themselves to recreate a BellSouth retail service, we also conclude that it is appropriate for us to leave it to the parties to negotiate what precisely does constitute the recreation of a BellSouth retail service. We note, without endorsement, the argument of AT&T and MCI that combinations of network elements alone serving an end user will not constitute the recreation of a BellSouth retail service and that it is necessary to put into the equation management competency and skills, quality of service, customer support, and marketing. We also recognize that it may well be the strategy of AT&T and MCIm, as well as other ALECs, to provision local telecommunications services by means of network element combinations in ways that will distinguish their services from those of BellSouth in the marketplace. We choose, however, to impose no restrictions on these negotiations apart from our conclusion that something more than a loop and local switching element is necessary.

2. Non-recurring Charges

The issue presented is what are the appropriate non-recurring charges (NRCs) for the following combinations of network elements in the case of the migration of an existing BellSouth end user: 2-wire analog loop and port; 2-wire ISDN (Integrated Services Digital Network) loop and port; 4-wire analog loop and port; and 4-wire DS1 (Digital Bipolar Signal One) loop and port. As set forth in this part, we conclude that non-recurring charges are to be based on present technology and the work times required therewith to resolve fallout and to perform switch translations and, in certain cases, the activation of designed services.

Development of Nonrecurring Charges for the Migration of an Existing BellSouth Customer Without Loop and Port Separation

MCIm

Until we determine the appropriate NRCs for loop and port combinations for the migration of an existing BellSouth customer, MCIm asserts in its petition that the migration NRCs would be determined by adding the stand-alone rates for the loops and ports, which we established in Order No. PSC-96-1579-FOF-TP. This would result in NRCs as follows: $178 for the 2-wire analog loop and port; $394 for the 2-wire IDSN loop and port; $179 for the 4-wire analog loop and port; and $652 for the 4-wire DS1 loop and port. These NRCs are inappropriate, MCIm contends, because in each case, the process should entail less than two minutes to perform and cost less than $1.49.[4]

MCIm witness Hyde filed cost studies based on the assumption that soft dial tone using DIP/DOP was deployed in the BellSouth network and that BellSouth would not disconnect the loop and port before furnishing the UNEs to MCIm. He states that his studies mirror BellSouth's filing in Georgia in Docket No. 7061-U, except that unnecessary functions are removed and BellSouth's proposed fallout rate is reduced from 20 per cent to three per cent.

MCIm witness Hyde assumes there will be fallout (rejection) resolution costs associated with the Local Carrier Service Center (LCSC)(JFC 2300). This center serves as the customer point of contact where orders containing errors are resolved. MCIm proposes an LCSC installation work time of 0.0075 hour based on three per cent of the orders falling out during the provisioning process. MCIm further assumes that each fallout episode takes an average time of 15 minutes to resolve. MCI only assigns LCSC installation work times to the initial combined loop and port. Witness Hyde argues that fallout resolution work time should only be applied to the first loop and port combinations, not additional ones, because BellSouth assumes fallout resolution on a per order, not per loop and port combination, basis. He further states that he proposes a three per cent fallout rate because BellSouth witness Stacy

[4]BellSouth currently charges $1.49 to perform a PIC (Presubscribed Interexchange Carrier) change. A PIC change is the process by which telecommunications end users switch long distance providers. MCIm argues that the functions necessary to migrate a loop and port combination are essentially the same as performing a PIC change.

testified in the aforementioned Georgia docket that this is what BellSouth was currently experiencing. We note, however, that while witness Stacy stated that BellSouth has achieved a flow-through rate of approximately 97 per cent in certain exchanges for retail residential services, he added that after two years, it had not achieved flow-through at all for UNEs and he could not anticipate flow-through greater than 80% in the foreseeable future. Witness Hyde notes that Southwestern Bell reportedly experiences a current flow-through rate of 99 per cent with its service resale provisioning system and that it expects to achieve this rate for UNE provisioning as well.

MCIm also assumes "recent change" translation associated with the Recent Change Memory Administration Group (RCMAG)(JFC 4N1X). As we have noted, a "recent change" translation process for a loop and port combination simply involves reprogramming the switch to recognize that an ALEC is now the carrier for billing purposes. Witness Hyde states that the "recent change" translation job function would have to be manually performed today. He states, however, that in a forward-looking environment that function should be automated as is the case presently in the BellSouth network for ESSX [Electronic Switching System Extension] and some other functions.

MCIm's witness Hyde states that charges for ISDN and DS1 loop and port combinations are higher than for 2-wire and 4-wire analog loop and port combinations because these applications involve designed services, e.g., Circuit Provisioning Group (CPG), Account Customer Advocate Center (ACAC), and Special Services Installation and Maintenance (SSIM), where BellSouth provides not only dial tone as in "plain old telephone service" (POTS), but also data transmission capability.

AT&T

AT&T filed cost studies also based on the "recent change" process. AT&T's "recent change" process assumes only fallout resolution costs associated with the RCMAG job functions and assumes that the switch translations are electronically performed. AT&T's proposed NRCs are the same for each loop and port combination in issue.

AT&T witness Walsh proposes no LCSC installation work time because a "recent change" switch translation is all that is required, which he believes would be handled entirely by the RCMAG. AT&T witness Walsh states that AT&T's NRCM assumes efficient OSSs with 98 per cent of the fallout being electronically handled by the

Provisioning Analyst Work Station (PAWS), or a similar OSS, involving only processing time. The remaining two per cent would require manual assistance by the RCMAG to deliver "recent change" translation instructions to the switch. The LCSC (JFC 2300) and the Connect & Test (JFC 2730) functions are not required with electronic ordering according to witness Walsh, and he estimates an average time of no more than seventeen and a half minutes for the RCMAG to resolve fallout conditions. Witness Walsh further states that cross-audits performed as a regular general maintenance routine can totally avoid synchronization problems that lead to much of the fallout. He states that the costs of such audits would be captured in recurring rates. Witness Walsh states that fallout in the LCSC can be automatically redirected to the ALEC for resolution. Although he states that LCSC activity is not required, he notes that the LCSC might occasionally call the ALEC in an effort to manually resolve a problem. In such a case, AT&T would assign fallout resolution cost only to the initial combined loop and port because AT&T considers the entire ordering process involving multiple combinations to be one order. For example, while an order might consist of several loop and port combinations, which would involve as many internal processes, AT&T would assign the work time only to the initial combination.

BellSouth Proposal

BellSouth witness Caldwell's non-recurring cost development is based on a collocation proposal that involves physically disconnecting the existing loop and switch port combination on BellSouth's network, with the ALEC recombining the elements at a physical collocation space. The AT&T and MCIm cost studies are based, however, on a "switch as is" theory, that is to say, an existing connected customer is switched (migrated) without physical disconnection. Witness Caldwell contends that "switch as is" constitutes resale.

Under BellSouth's collocation proposal, witness Landry states that while loop and port combination orders would be submitted to BellSouth on one service request, BellSouth would separate the request into two separate service orders and process the request as if each element had been received as an individual order. He argues that the loop and port must be separated into two service orders, because the unbundled loop offerings are currently processed by access billing systems and the port offerings are processed by non-access billing systems.

BellSouth witness Varner states that there is no such thing as migration of a loop and port. Typically, he explains, migration